

Telecommunications

[Public Chapter 782 \(2004\)](#)Sales & Use
tax notice
#04-13

Effective July 1, 2004, [Public Chapter 782, Acts of 2004](#), amends Tenn. Code Ann. Title 67, Chapter 6 relative to telecommunications services.

New Definitions: Public Chapter 782 provides new and modern definitions for the taxation of telecommunications services. Among them are:

- Telecommunications service
- Private communication service
- Information services
- Ancillary services

“Telecommunication service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term ‘telecommunications services’ includes such transmission services in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such services are referred to as enhanced or value added services.

This new definition makes it clear that taxable telecommunication services include services used to transport signals regardless of the technology used for transmission (e.g., electrical, digital, magnetic, wireless, optical, electromagnetic, or others) and regardless of whether the content is voice, audio, video, data, or others. The scope of this definition also makes it clear that it is irrelevant whether the services are regulated as telecommunications by either the Federal Communications Commission (FCC) or the Tennessee Regulatory Authority (TRA) and that it is irrelevant whether the services are considered

basic, enhanced, or value added services. So long as the primary purpose of the service is the transmission, conveyance, or routing of content, the service is a telecommunication service subject to tax in Tennessee.

Tenn. Code Ann. Section 67-6-102(a)(25)(F) continues to provide that furnishing, for any consideration, intrastate, interstate, and international telecommunication services that are sourced to Tennessee, whether billed to a customer on a call-by-call basis or some other basis, is a taxable service under sales and use tax law.

- Intrastate telecommunication services continue to be subject to tax at the state rate of 7% and a flat 2.5% local tax rate regardless of the local tax rate levied by the local jurisdiction.
- Interstate and international telecommunication services sold to businesses continue to be subject to the state tax rate of 7.5% and are exempt from local tax.
- Interstate and international telecommunication services sold to persons other than businesses continue to be subject to a state tax rate of 7% and a flat 1.5% local tax rate regardless of the local tax rate levied by the local jurisdiction.

In general, telecommunication services will be sourced to Tennessee and subject to Tennessee sales tax if:

- The telecommunication services are billed on a call-by-call basis and either originate or terminate in Tennessee and are charged to a service address in Tennessee, or
- The telecommunication services are not billed on a call-by-call basis but are billed to a customer's place of "primary use" which is in Tennessee.

Services billed on a call-by-call basis mean any method of charging for telecommunication services where the price is measured by individual calls. Telecommunication services that are **not** billed on a call-by-call basis include billings for a fixed or flat monthly amount and the customer is entitled to make an unlimited number of calls.

Service address means the location of the telecommunications equipment from which the call originates or terminates and to which the call is charged. Place of primary use means the street address where the customer's use of the service primarily occurs, which is either the residential address or primary business address of the customer.

"Private communication service" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channels are connected, and includes switching capability, extension lines, stations, and any other associated services provided in connection with the use of such channels.

Charges for private communication services that are sourced to Tennessee are subject to sales tax in Tennessee based on the location of customer channel termination points. A communications channel is a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points. A customer channel termination point is the

location where the customer either inputs or receives the communications.

Private communications services are taxed at the rates discussed below:

- Charges for services where all of the customer channel termination points are located in Tennessee are intrastate and subject to tax at the state rate of 7% and the 2.5% local rate regardless of the local tax rate levied by the local jurisdiction.
- Separately itemized service charges for a communications channel between two customer channel termination points of which one is located outside Tennessee are interstate or international services. Fifty percent of the separately itemized charges for the communications channel are subject to sales tax in Tennessee at the state rate of 7.5% and are exempt from local tax, assuming such services are sold to businesses.
- Service charges for communications channels with customer channel termination points in multiple states and the service charges are not separately itemized are interstate or international services. The non-itemized charge shall be prorated based on the number of customer channel termination points in Tennessee and the prorated charge is subject to sales tax in Tennessee at the state rate of 7.5% and is exempt from local tax, assuming such services are sold to businesses.

Exclusions from Telecommunications

Definition: The new law also specifies what is excluded from the definition of "telecommunication." While the items listed below are not subject to sales tax as telecommunication services, they may be otherwise subject to tax under different provisions of the sales tax statutes. These exclusions are:

- Information services;
- Installation or maintenance of wiring or equipment on a customer's premises;
- Tangible personal property;
- Advertising, including directory advertising;
- Billing and collection services provided to a third party;
- Internet access services;
- Radio and television audio and video programming services;
- Ancillary services; and
- Digital products delivered electronically, including software, downloaded music, or reading materials.

“Information Services” as used in this section mean the offering of a capability that allows data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the primary purpose of the underlying transaction is the data. “Information services” do not include the processing or manipulation of data where the primary purpose of the underlying transaction is to allow the transmission, conveyance, or routing of the data, nor does it include the management, control, or operation of a telecommunications system.

Examples of information services delivered electronically that are not telecommunication services include check guaranty services, credit card guaranty services, database search services, and home security system services. The sale of information services is **not** subject to tax in Tennessee.

“Ancillary services” mean services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing services, directory assistance, vertical service, and voice mail services.

The law changes provide for a new definition of ancillary services that were previously taxable as

a part of the gross charge for telecommunication services. Ancillary services are not defined as telecommunication services, but ancillary services **are** subject to sales tax. Ancillary services include vertical services. Vertical services are advanced calling features such as caller identification, call waiting, and call forwarding. Ancillary services are subject to tax at the state rate of 7% and a flat 2.5% local rate regardless of the local tax rate levied by the local jurisdiction.

Telephone Services: Telephone services are taxable telecommunication services regardless of whether provided via land line, microwave, wireless, or similar technologies and include local, long-distance, mobile, 800, or other services designated as toll-free services, 900 services, facsimile services, and teleconference services, both audio and video. The following are examples of charges made to customers which are part of the gross charge for telephone services and are subject to sales tax if the telephone services are subject to sales tax, regardless of whether such charges are separately itemized.

- Federal access charges;
- Connection and disconnection charges;
- Reconnection charges;
- Federal universal service fees;
- Local telephone number portability charges;
- Charges for establishing new service;
- Minimum charges; and
- One-time charges.

Emergency 911 charges separately itemized to customers are not charges for telecommunication services and are not subject to sales tax.

Federal excise taxes that are required to be collected from the telecommunications customer are not a part of the gross charge for the telecommunication service and are not subject to tax.

Mobile Telecommunications Services: Furnishing mobile telecommunications services

continues to be subject to sales tax. Examples of such services are paging and beeper services, mobile radio services, wireless services including cellular roaming services, and air-to-ground telephone service. Mobile telecommunications services do not only include transmission services for voice but also include transmissions for other types of content including data or video as in text messaging.

Sales of mobile telecommunications services are sourced to Tennessee and subject to Tennessee sales tax if the customer's place of primary use is in Tennessee. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider.

Private Line Services: The new law deletes the narrow and obsolete definition of private line services, and the exemption for private line services is repealed. Dedicated access lines are examples of private line services that are now subject to sales tax. The sales tax on private line services will first apply to bills issued to customers that are dated on or after July 1, 2004, for charges not billed previously. Private line services are private communication services and are sourced to Tennessee and subject to tax in the same manner and rates as other private communication services.

Enhanced Services: The new law clarifies that services that are not regulated by the FCC because such services are considered enhanced services are still subject to sales tax in Tennessee if the primary purpose is the transmission, conveyance, or routing of content. Examples of such services include, but are not limited to, voice over Internet protocol (VOIP) and electronic data interchange (EDI). Such enhanced services are subject to tax at the same tax rates as other telecommunication services.

Virtual Private Network Services: The law clarifies that virtual private network services

are subject to sales tax in Tennessee. Through the use of new technologies in equipment and software, private communications networks can be built within the public network or the Internet backbone. Such services may be referred to as virtual private network services. Dedicated access lines may be used to connect customers' locations or sites to the virtual private network. Virtual private network services and dedicated access lines are examples of private communications services. Such services are taxable telecommunications services regardless of whether the provider is regulated as a telecommunications provider and regardless of whether the network is constructed using Internet protocol, frame relay, or other types of protocol. Such services continue to be subject to tax at the same tax rates as other telecommunication services.

New Exemption: Effective July 1, 2004, Public Chapter 782 provides a new exemption for private communication services when such services are utilized for communications with a computer or telecommunications center located in Tennessee by a taxpayer that has qualified for the headquarters tax credit provided for in Tenn. Code Ann. Section 67-6-224 or by an affiliate of such taxpayers. The purchaser must apply and have been issued an exemption certificate by the Commissioner of Revenue. The purchaser is required to provide a copy of its exemption certificate to the seller of the private communication services to purchase such services exempt from tax.

In addition, sales of telecommunication services between affiliates, when one of the entities that is a member of the affiliated group has qualified for the headquarters tax credit provided for in Tenn. Code Ann. Section 67-6-224, are not subject to sales tax. The entity that is a part of the affiliated group that purchases the telecommunication services from a vendor that is not a member of the affiliated group shall be deemed the user and consumer of such services and shall pay any

applicable Tennessee sales tax on its purchases of telecommunication services.

Other Exemptions: In addition, Tenn. Code Ann. Section 67-6-329 makes clear that the services listed below continue to be exempt from the sales tax.

- Public pay phone services;
- Automatic teller machine (ATM) services; and
- Wire transfers or other services provided by any corporation defined as a financial institution under Tenn. Code Ann. Section 67-4-2004(8).

Bundled Transactions: Effective July 1, 2004, Public Chapter 782 provides for a new definition and new procedures for handling the taxation of a “bundled transaction” involving Internet access, telecommunications, and ancillary services. These new procedures will **not** apply to transactions where other types of services or tangible personal property are also included in the bundled sale of products. The new definition for a bundled transaction is:

“Bundled Transaction” means the retail sale of otherwise distinct and identifiable products for one non-itemized price that does not vary and is not negotiable based on the selection of the products made by the purchaser.

Please see the Department of Revenue notice on “Bundled Transactions” for more information and the new procedures.

Telecommunications Sales Tax Return:

The Department of Revenue is revising the telecommunications sales tax return. The first returns and payments under the changes enacted in Public Chapter 782 will be due at the department on August 20, 2004.

Telecommunication services providers will continue to file one Tennessee telecommunications sales tax return per period.

Streamlined Sales Tax: There will be further changes in the application of the sales tax to telecommunication services when Tennessee’s Streamlined Sales Tax law takes effect July 1, 2005. The department will provide additional information about those changes prior to the effective date.

If you have any questions about this notice, you may contact the department. Tennessee residents outside the Nashville calling area may call our statewide toll-free number at (800) 342-1003. Callers from Nashville or out-of-state may dial (615) 253-0600. You can access additional information on our Web site at www.Tennessee.gov/revenue.

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